SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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JEAN CARLOS JIMENEZ

Plaintiff,

-against

HOWARD MOSS,

Defendant.

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Index No.: 54417/2019

DECISION & ORDER

Motion Seq. #1

Hubert, J.S.C.

Plaintiff commenced this action to recover damages for personal injuries he allegedly sustained as a result of a motor vehicle accident that occurred on March 15, 2019, on the Saw Mill Parkway near the intersection with Executive Boulevard in Yonkers, New York. Plaintiff alleges that he was stopped at a traffic light when he was hit from behind by a vehicle driven by Defendant Howard Moss. On this motion, Plaintiff moves for partial summary judgment pursuant to CPLR § 3212 on the issue of liability.

In order to make a prima facie showing of entitlement to judgment as a matter of law, the moving party must tender sufficient evidence to demonstrate the absence of any material issues of fact. *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923 (1986). The parties' competing contentions must be viewed in a light most favorable to the non-moving party. *De Lourdes Torres v. Jones*, 26 N.Y.3d 742, 763, 27 N.Y.S.3d 468 (2016). If the moving party meets its burden, the burden shifts to the nonmoving party to establish, through admissible evidence, that there are disputed issues of material facts for trial. CPLR § 3212 (b); *Zuckerman v. New York*, 49 N.Y.2d 557, 560, 427 N.Y.S.2d 595 (1980). The non-moving party must produce evidence in the record and may not rely on conclusory statements or contentions. *Id.* Instead, the opponent of a motion must lay bare affirmative proof sufficient to establish that real defenses

exist that warrant a trial. Summary judgment is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue of fact, but "only the existence of a bona fide issue raised by evidentiary facts and not one based on conclusory or irrelevant allegations will suffice to defeat summary judgment." *Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231, 413 N.Y.S.2d 141 (1978). Additionally, it is not the function of the court to make credibility determinations or findings of fact, but rather to identify material triable issues of fact. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505, 243, 942 N.Y.S.2d 13,16 (2012), *citing Sillman v. Twentieth Century Fox Film Corp.*, 3 N.Y.2d 395 165 N.Y.S.2d 498 (1957). If the moving party fails to sustain its burden, the court need not address the sufficiency of the opposing party's proof. *Grant v. 132 W. 125 Co., LLC*, 180 A.D.3d 1005, 120 N.Y.S.3d 345 (2d Dep't 2020).

"A driver of a vehicle approaching another vehicle from the rear is required to maintain a reasonably safe distance and rate of speed under the prevailing conditions to avoid colliding with the other vehicle." *Nsiah-Ababio v. Hunter*, 78 A.D.3d 672, 913 N.Y.S.2d 659, 672 (2d Dep't 2010); *see* VTL § 1129 (a). Thus, a rear-end collision with a stopped or stopping vehicle establishes a prima facie case of negligence on the part of the operator of the rear vehicle, thereby requiring that operator to rebut the inference of negligence by providing a nonnegligent explanation for the collision. *Tutrani v. County of Suffolk*, 10 N.Y.3d 906, 861 N.Y.S.2d 610 (2008). A plaintiff is no longer required to show freedom from comparative fault to establish her or his prima facie entitlement to judgment as a matter of law on the issue of liability. *Rodriguez v. City of New York*, 31 N.Y.3d 312, 76 N.Y.S.3d 898 (2018).

Here, in support of his motion, Plaintiff has submitted, *inter alia*, the parties' respective deposition transcripts, and an affidavit prepared by Plaintiff, Jean Carlos Rodriguez, attesting to

the facts and circumstances of the accident. In his affidavit and at his deposition, Plaintiff states that at the time of the accident, he was driving home on the Saw Mill Parkway; the weather was clear and the roads were dry; and he was stopped at a red light for two to three seconds when he was hit in the rear by the Defendant's vehicle. The Defendant testified at his deposition that he was driving behind Plaintiff's vehicle and saw traffic in front of him slowing down, but nevertheless struck the rear of Plaintiff's vehicle.

In view of this evidence, Plaintiff has established, prima facie, that Defendant's negligence was a proximate cause of the accident. In opposition, Defendant has submitted an affirmation from his attorney, taking issue only with Plaintiff's reliance on a police report and Plaintiff's claim that the Defendant made an admission against interest to a responding police officer. In view of the above evidence, however, the Court need not resolve this issue on summary judgment. The affirmation of the Defendant's attorney, who lacks personal knowledge of the facts, is otherwise insufficient to raise a triable issue of fact. Defendant has therefore failed to raise a triable issue of fact as to whether there was a nonnegligent explanation for striking the rear of Plaintiff's vehicle.

Accordingly, it is hereby:

ORDERED, that Plaintiff's motion for partial summary judgment on the issue of liability is granted; and it is further

ORDERED, that Plaintiff shall serve a copy of this Order with notice of entry within thirty days; and it is further

ORDERED, upon completion of all discovery, and proof of service of this Order with notice of entry, this matter shall be set down for trial for an assessment of damages.

The foregoing constitutes the Decision & Order of this Court.

Dated: White Plains, New York
January 20, 2021

James W. Hubert

Hon. James W. Hubert
Supreme Court Justice